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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
PLANO DIVISION**

**IN RE:**

**DONALD TRIPLETT, JR.,  
  
Debtor.**

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**CASE NO. 19-42570  
Chapter 7**

**OBJECTION TO MOTION FOR RULE 2004 EXAMINATION**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Donald Triplett, Jr., Debtor in the above entitled and numbered case (“Debtor”), and files this his *Objection to Creditors Shawn Valk’s and Ron Valk’s Motion for Examination under Bankruptcy Rule 2004 of Donald R. Triplett*, and in support thereof would show as follows:

1. Debtor admits the allegations contained in Paragraph 1 of the Motion.
2. Debtor admits the allegations contained in Paragraph 2 of the Motion.
3. Debtor admits the allegations contained in Paragraph 3 of the Motion.
4. Debtor admits the allegations contained in Paragraph 4 of the Motion.
5. Debtor admits the allegations contained in Paragraph 5 of the Motion.
6. Debtor admits the allegations contained in Paragraph 6 of the Motion to the extent

that documents so provide.

7. Debtor admits the allegations contained in Paragraph 7 of the Motion as to the sale of the Lake House and the deposit of the proceeds of its sale with the Trustee of the Bankruptcy proceeding. Debtor denies the allegation that contributions and expenditures for the ownership, improvement, furnishings, and maintenance of the Lake House were “bogus, ... fabricated or deriv[ed] from materials/goods/services ... for which he did not pay.”

8. Debtor admits the allegations contained in Paragraph 8 of the Motion.

9. Debtor admits the allegations contained in Paragraph 9 of the Motion to the extent of Ron Valk’s claims of fraud and his filing the “Rockwall County Case.” Debtor denies the assertion of fraud used as the basis of this claim.

10. Debtor admits the allegations contained in Paragraph 10 of the Motion to the extent that documents so provide.

11. Debtor admits the allegations contained in Paragraph 11 of the Motion to the extent that documents so provide.

12. Debtor admits the allegations contained in Paragraph 12 of the Motion to the extent that Prosperity Bank-Victoria has filed a Proof of Claim, but denies the allegation that Debtor has been “kiting,” or fraudulently writing, checks from the account of Copper Creek Distributors.

13. Debtor denies the allegation contained in Paragraph 13 of the Motion that the Prosperity Bank-Victoria reveals any “theme of fraud” and denies that any monies owed by Debtor to Prosperity Bank-Victoria may be used as evidence of any alleged fraud levied by the Valks.

14. Debtor denies the allegations contained in Paragraph 14 of the Motion to the extent that no “cause” exists that would warrant this Court to authorize the requested deposition and/or production of documents.

15. Debtor admits the allegation contained in Paragraph 15 of the Motion to the extent

that it is a proper recitation of Rule 2004(a). Debtor denies the allegation in Paragraph 15 of the Motion to the extent that the citation from *In re Fearn*, 96 B.R. 135, 138 (Bankr. S.D. Ohio 1989) is improperly quoted and to the extent that, even when properly used, such citation does not apply in this instance since the meaning of this passage implies that the party requesting the examination must do so relative to the impacted parties' dealings, not to dealings with an outside third party. In an alternate reading of the passage, the examination may be conducted against other creditors dealing with the Debtor. Here, the Valks are attempting to support their demand for examination of the Debtor based upon their allegations of fraud between Debtor and a third party Bank, allegations that have not been levied by such Bank. They are not seeking to examine the creditor Bank. In either instance, while "the scope of a Rule 2004 examination is [indeed] broad.... it must first be determined that the examination is proper." *In re GHR Energy Corp.*, 35 B.R. 534, 537-38 (Bankr. D. Mass. 1983). "[E]xamination may be had only of those persons possessing *knowledge* of a debtor's acts, conduct or financial affairs so far as this relates to a debtor's proceeding in bankruptcy." *Id.* at 537 (emphasis added). Here, the Valks possess no such knowledge, but are basing their Motion on unfounded allegations.

16. Debtor admits the allegations contained in Paragraph 16 of the Motion to the extent that they are proper recitations of Rule 2004(b) and case law.

17. Debtor denies the allegation contained in Paragraph 17 to the extent that the cited case does not qualify the scope of Rule 2004 as "extremely" broad, and while it does state that "some [courts] have compared it to a 'fishing expedition,'" there is no mention that those courts view such "fishing expeditions" as a "lawful" exercise of the court's authority as asserted. *In re Hammond*, 140 B.R. 197, 201 (S.D. Ohio 1992). Indeed, in cases where "the debtor's interest may so greatly outweigh those of the examiner[, such]...examination should be quashed." *Id.* When

such examination is being sought for “purposes of abuse or harassment,” a debtor may also avoid a Rule 2004 examination.” *Id.* Such harassment appears to be the motive underlying the Motion. While the Debtor admits the allegation in Paragraph 17 that a party must meet the “good cause” standard required to grant Rule 2004 examination, it denies that the Valks have established such “good cause” and as such have failed to meet the requisite standard in this instance.

18. Debtor admits the allegation contained in Paragraph 18 of the Motion to the extent that it is a proper recitation of Fed. R. Bankr. P. Rule 2004(c).

19. Debtor denies the allegation contained in Paragraph 19 of the Motion that cause exists for ordering the requested examination of Debtor. Further, the topic areas that are the “focus” of the examination are unduly broad, non-specific, speculative, appear to be a “fishing expedition” for information, and as such, lack any justification for a 2004 examination of the Debtor.

20. Debtor is not required to either admit or deny any allegation contained in Paragraph 20 of the Motion since such Paragraph states that the Valks “intend” to object to the dischargeability of its debt at some point and “perhaps” to Debtor’s general discharge under Bankruptcy Code section 727 and Rule 4004. That the Valk’s might conceivably object or that they intend to do so at some point in the future fails to qualify as an objection or objections at this time.

21. Debtor admits the allegation contained in Paragraph 21 of the Motion to the extent of the Valks’ willingness to cooperate and for scheduling matters. Debtor denies the allegation contained in Paragraph 21 of the Motion that the Valks may justify the application of subpoena power due to the lack of “cause” for examination.

22. Debtor admits the allegation contained in Paragraph 21 of the Motion that seven

(7) hours are permitted for discovery in Bankruptcy cases.

23. Debtor denies the allegation contained in Paragraph 23 of the Motion that the Valks have need of the requested Documents nor does “cause” exist that would warrant this Court to order production of such for examination.

WHEREFORE, PREMISES CONSIDERED, Debtor prays that the Court enter its order denying the relief requested, and that the Court grant such other and further relief as it may deem just and proper.

Dated: December 2, 2016.

Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 2, 2016, a true and correct copy of the foregoing *Objection to Motion for Rule 2004 Examination* was forwarded via email pursuant to the Court’s ECF system to those parties receiving electronic notice in this case and via United States first class mail, postage prepaid, to the parties on the attached service list.

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Joyce W. Lindauer

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Internal Revenue  
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Internal Revenue  
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Internal Revenue  
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Department of the Treasury. (2006)  
Internal Revenue  
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